UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.120
13 November 1992

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 120TH MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 November 1992, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of report submitted by States parties under article 19 of the Convention

Initial report of Afghanistan

---

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.120/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-14395 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Initial report of Afghanistan (CAT/C/5/Add.31)

1. At the invitation of the Chairman, Mr. Nohmat, Mr. Noori, Mr. Akrami and Mr. Mokhtarzada (Afghanistan) took places at the Committee table.

2. Mr. NOHMAT (Afghanistan) said that the Islamic State of Afghanistan had great respect for the Committee against Torture and recognized the importance of its work. Since Afghanistan was a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it was willing to strengthen its ties with the Committee and to cooperate wherever possible. However, although Afghanistan had undertaken international commitments and wanted to respect them fully, it was not always in a position to do so on account of domestic problems and the lack of infrastructure needed to apply the standards set in international instruments. Afghanistan would welcome any assistance that could be provided by the United Nations and the advisory services of the Centre for Human Rights.

3. He drew particular attention to the fact that the report before the Committee had been submitted on 21 January 1992 and prepared by the previous regime. He therefore found himself in the difficult position of having to introduce and comment on a report drawn up before the present Government had come to power. The report had a number of shortcomings, particularly because it did not go into enough detail and lacked examples of how international standards were being implemented and what measures had been taken to give effect to the provisions of the Convention.

4. Since the report had been drafted, enormous changes had taken place in Afghanistan and the country was having to deal with all the damage and destruction that had been caused. The holy war (jihad) had brought a new administration to power and, according to Islamic doctrine, it provided the means by which to combat social injustice and tyranny and to restore peace, justice, equality and fraternity, as well as law and social order, in accordance with the sacred precepts of Islam. The transitional Government was facing difficulties due to Afghanistan's internal conflicts, but free and democratic elections would help normalize the situation. A new Constitution based on Islamic principles would provide the framework for the legal system and guarantee protection for all persons against any abuses. The Constitution would be entirely in conformity with international law and, in particular, with international human rights instruments. The Islamic State of Afghanistan was taking measures to improve the judiciary and to prevent criminal acts from being committed in the country and its foreign policy was based on non-interference in the affairs of other States and unconditional support for the United Nations Charter. It fully recognized that the practice of torture was a particularly serious violation of human rights.

5. Mr. SORENSEN (Country Rapporteur) said that he recognized the seriousness of the problems Afghanistan was facing as a result of all the changes that had recently taken place. However, human rights were the key to solving many of

those problems. During a transition period between one regime and another, human rights were often neglected, but article 2, paragraph 2, of the Convention stated that "no exceptional circumstances ... may be invoked as a justification of torture".

6. With regard to the report that had been submitted, he realized that the representatives of Afghanistan were in a difficult position because it had been drafted before the present Government had come to power, but some additional comments and information were nevertheless needed. For example, although the death penalty theoretically did not come within the Committee's mandate, the Committee had received information from Amnesty International stating that three persons had been publicly hanged in Kabul on 7 September 1992. He requested the Afghan representatives to provide further explanations, since he had thought that public hangings could be regarded as cruel and degrading punishment. Clarifications were also needed on the supremacy of Islamic law, which had, according to the Afghan representatives, superseded all other legislation, and on the information provided by Amnesty International that, under Islamic law, a person could be stoned to death for adultery, that persons guilty of theft could have a hand or foot cut off, that the consumption of alcohol was punishable by 80 lashes and that the death penalty was applicable for persons found guilty of trading in alcohol. He wished to know whether Afghanistan characterized such penalties as "pain or suffering arising only from, inherent in or incidental to lawful sanctions", as stated in article 1 of the Convention.

7. According to paragraphs 7, 9, 12 and 44 of the report, testimony, confessions or statements obtained by compulsion were not "valid". He asked the Afghan representative for comments on the meaning of the term "valid" and drew their attention to the fact that article 15 of the Convention made it clear that any statement made as a result of torture should not be "invoked as evidence". Paragraph 10 of the report stated that torture was regarded as a crime. However, it was not clear what criminal penalties could be applied to those found guilty of practising torture. He would like to know whether such persons could be sentenced to long-term imprisonment without a criminal trial and what the minimum and maximum sentences would be. More information was also needed on the rights of persons under arrest, including the right to be informed of charges against them; the right to remain silent; the right to have their relatives informed of their whereabouts; the right to communicate with a lawyer; and the right to be examined by a doctor of their choosing.

8. The Committee would like to know how legislation stood at the present time, as a result of the fall of the previous regime. With regard to paragraph 17 of the report, he asked whether Afghanistan had a code of conduct for methods and practices of interrogation and whether a register was kept of persons under arrest, giving details of arrests, interrogations and other information which would protect prisoners against ill-treatment and torture and cover arresting officers if accusations of torture were made against them.

9. Referring to paragraph 27 of the report, he asked whether the Constitution in question was still in force, since it had been stated in the oral introduction that a new Constitution was being drafted. Paragraph 29 of the report mentioned the expulsion or return of refugees, but did not go into detail about the status of foreign refugees in Afghanistan, simply stating

that "No citizens of the Republic of Afghanistan shall be exiled inside or outside the country". To what extent did such a provision comply with article 3 of the Convention? He also requested clarifications on the wording of paragraph 38 of the report, which was rather negative, unlike article 9 of the Convention, which was positive. In his opinion, paragraph 39 of the report was referred to matters that were of the utmost importance as far as the eradication of the practice of torture was concerned. He commended Afghanistan on the fact that training and education regarding the prohibition against torture were provided for doctors, in accordance with article 10 of the Convention. He nevertheless wished to know whether such educational opportunities were also available to dentists, nurses, physiotherapists and other medical personnel, whether such training was at the graduate or the post-graduate level and whether any medical rehabilitation programmes had been set up.

10. Mr. BURNS (Alternate Country Rapporteur) said that it would be preferable for the current report to be withdrawn and for a new one to be submitted because it was not clear what information was still valid and what would need to be changed. As it was unfair to ask the representatives of the Government of Afghanistan to reply at such short notice, an additional report would be necessary. The Committee was aware of the difficult situation that Afghanistan was facing.

11. According to paragraph 27 of the report, international conventions took precedence over domestic law. He asked whether that continued to be the case and how international law was incorporated into domestic law at the present time.

12. The report stated that the judiciary was independently appointed. In view of the decisions adopted by the Afghan leadership in May 1992 and the procedural guidelines issued to the judiciary in July 1992 advising that all laws not in conformity with Islamic injunctions were to be abolished and that all members of the judiciary must interpret the law in the light of Islamic principles, he wondered whether the description of the courts contained in the report was still accurate. If so, he asked what their relation was to the Islamic courts and, if not, he requested further information on the hierarchy of the courts, on how the judiciary was appointed and on the relationship between the Islamic courts and other courts in the event that they existed side by side.

13. Since the report appeared to suggest that legal aid for persons accused of offences was a future goal rather than actual reality, he asked for a description of the legal profession in Afghanistan and wished to know whether a person accused of an offence had access to a lawyer upon arrest, when charged with an offence and when tried. Was the accused responsible for obtaining and paying a lawyer or did the State provide such services? What powers did the police, the security services and the army have for making an arrest, how long could a person be held in custody before being brought before a judicial official and was he entitled to legal counsel while is custody? Was there a period during which a person could be held incommunicado upon arrest? Was there any review by a judicial officer of a person held in custody? Was there anything in Afghan law analogous to habeas corpus, under which an accused person could go before a judge and require the State to show

that there were grounds for his detention? According to the report, the former Constitution provided for compensation for the victims of wrongful acts committed by agents of the State and he inquired whether that was still the case, how such compensation was obtained and whether there were statistics showing that any citizen had ever received such compensation.

14. Notwithstanding paragraph 38 of the report, it would appear that article 34 of the Afghan Constitution stating that "No citizens of the Republic of Afghanistan shall be exiled inside or outside the country" and article 35 specifying that "No citizen of the Republic of Afghanistan shall be extradited to a foreign State", as quoted in paragraph 29 of the report, were in clear breach of article 8, paragraphs 1 and 2, of the Convention. Article 8 of the Convention implied that even Afghan citizens must be extradited, for example, in the case of an Afghan citizen accused of having committed torture in another State. He asked whether those articles were still valid under Afghan law and, if so, how the Afghan Government explained the manifest conflict with its obligations under the Convention.

15. Paragraph 37 of the report stated that "Trial in the courts of the Republic of Afghanistan shall be held openly". Yet the Committee had information indicating that a recent trial in which four persons had been sentenced to death had been held in camera and that no appeal or review had been allowed. He asked whether trials were open to the public under the new legal system and whether provision had been made for review or clemency in the case of persons convicted of serious offences.

16. Mr. EL IBRASHI said that he also wondered whether the report was still valid and whether it reflected the point of view of the present Government. If not, it should be put aside and the Committee should wait for a new report.

17. As a Muslim and a student of Islamic law, he noted that, under Islamic criminal law, there were two types of punishment for crimes. The more serious type, the hudud, was restricted to crimes specified in the Koran and involved harsh penalties. For such penalties to be imposed, the accused must admit the crime and the evidence must be very clear. If there was any doubt, the hudud was ruled out. When deciding whether to impose such punishment, it was also essential to consider the circumstances of the crime. For example, if a man stole a loaf of bread to feed his family, the hudud did not apply.

18. It had been asserted that, under Islamic law, the death penalty was imposed for trading in alcohol but that was not true.

19. He asked the Afghan representatives to explain the legal system of criminal law in Afghanistan. Simply saying that Islamic law was applied was too vague and he asked which specific provisions of Islamic law were meant.

20. Mr. GIL LAVEDRA said he agreed with other members of the Committee that a new report was needed. It was difficult for the Committee to analyse a report if it was not clear whether it was still valid. A new report should take account of all the questions asked and be based on the general guidelines regarding the form and contents of reports, as well as focusing on such aspects as the structure of the legal system, conditions of detention and the role of training and education. He agreed with Mr. El Ibrashi that it would

be important to clarify to what extent Islamic law was incorporated into Afghan criminal law.

21. Mr. MIKHAILOV said that it would be preferable to examine the report submitted rather than the current situation, for which the Committee had no report.

22. There had been a number of positive elements under the previous system. For example, the previous Government had ratified the Convention against Torture and the provisions of its Constitution had been consistent with the Convention. However, the legislative and legal system had now changed and a civil war was currently being fought in Afghanistan. The Committee should therefore consider the initial report and give Afghanistan the possibility of submitting a periodic report at a later date covering the period that followed.

23. Mr. BEN AMMAR said that there had been a change in Afghanistan from a communist to an Islamic Government and he wished to know whether the new regime considered itself bound by the international conventions ratified by the previous regime. That was an important question because Islamic Governments had ratified very few international instruments. He asked whether there was a legal text defining the state of emergency and its limitations and specifying which articles could be derogated from if a state of emergency was declared. He recalled that the Convention prohibited torture even in the event of domestic unrest. Did the Government of Afghanistan consider itself bound by the Geneva Conventions and their Optional Protocols with regard to states of emergency?

24. Were representatives of the International Committee of the Red Cross authorized to visit detention centres in Afghanistan? Was domestic law consistent with international commitments? The report stated that the judiciary was independent and he asked who appointed, promoted and punished judges. Was freedom of association respected? Were there legal opposition political parties? Was there freedom of the press and could the representatives of Afghanistan provide the names of free newspapers? Was there an organization for the defence of human rights and what was its name?

25. With regard to the question of non-interference in the affairs of States, he had heard allegations that persons had been trained in Afghanistan to destabilize other countries through violence.

26. The CHAIRMAN said that some of Mr. Ben Ammar's remarks did not seem to relate to the Convention against Torture, although they were perhaps of interest in a general context.

27. Mr. BEN AMMAR said that his comments should be seen in the light of the introductory remarks made by the representative of Afghanistan.

28. The CHAIRMAN asked whether there had been any cases of torture in Afghanistan and, if so, whether the Afghan representatives could provide some details on that problem.

29. Mr. SORENSEN suggested that the representatives should return at the next meeting to answer some of the questions raised and that the Committee should then decide on that basis how to proceed further. It was important to take advantage of the presence of the representatives, some of whom had travelled a great distance to be present in the Committee.

30. Mr. BURNS said that he shared Mr. Sorensen's view. The representatives of Afghanistan should provide as much information as possible, but, ultimately, a new report would be required because they could not possibly answer all the questions asked in such a short time.

31. The CHAIRMAN said that he agreed. Perhaps the Government of Afghanistan could be asked to provide a short additional report and a periodic report as a single document. The Committee might regard that as Afghanistan's first periodic report and then the next periodic report would be due in four years.

The public meeting rose at 11.35 a.m.